

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**DENNIS F. SMILEY**  
Claimant

VS.

**BOEING MILITARY AIRPLANES**  
Respondent

AND

**AETNA CASUALTY & SURETY COMPANY**  
Insurance Carrier

AND

**KANSAS WORKERS COMPENSATION FUND**

Docket No. 180,245

**ORDER**

Claimant appeals from an Award entered November 3, 1995 by Administrative Law Judge John D. Clark. The Appeals Board heard oral argument on January 4, 1996 by telephone conference.

**APPEARANCES**

Claimant appeared by his attorney, Brian D. Pistotnik of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Frederick L. Haag of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, Joel P. Hesse of Wichita, Kansas.

**RECORD AND STIPULATIONS**

The Appeals Board has reviewed and considered the record in the Award of the Administrative Law Judge and adopts the stipulations enumerated therein.

**ISSUES**

The Administrative Law Judge held that claimant suffered a subsequent intervening accident in the spring of 1993, when he injured his back picking up and/or hugging a small child. He found that the claimant's herniated disc was, therefore, not a natural or probable result of the work-related back injury claimant suffered on October 5, 1992. All benefits were denied. On appeal, claimant asks for review of the findings and conclusions of the

Administrative Law Judge regarding the nature and extent of claimant's disability, if any, and claimant's entitlement to an unauthorized medical allowance.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record and considering the arguments and briefs of the parties, the Appeals Board finds as follows:

The Award of the Administrative Law Judge should be modified to grant claimant medical benefits for the period beginning October 5, 1992 and ending April 4, 1993. The Award of the Administrative Law Judge should otherwise be affirmed in all respects.

The claimant has the burden of proof, as set forth in K.S.A. 44-508(g) and K.S.A. 1992 Supp. 44-501. He must persuade the trier of facts by a preponderance of the credible evidence that his position on an issue is more probably true than not true on the basis of the whole record. Further, the claimant has the burden of establishing his right to compensation by proving all the conditions on which his right depends. Knelson v. Meadowlanders, Inc., 11 Kan. App. 2d 696, 699, 732 P.2d 808 (1987); Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984). Claimant must demonstrate the greater weight of evidence in view of all the facts and circumstances in order to prevail by a preponderance of the credible evidence. *In re Estate of Robinson*, 236 Kan. 431, 690 P.2d 1383 (1984). This standard requires the claimant to prove the elements of his claim are more likely true than not.

The Award of the Administrative Law Judge sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. Specifically, the Appeals Board agrees that claimant has failed to meet his burden of proof that the aggravation to claimant's low back condition, which occurred in the spring of 1993, was a natural and probable result of his work-related injury of October 5, 1992. That conclusion having been reached, the compensation to which claimant is entitled should be limited to the reasonable and necessary authorized medical expenses incurred for the treatment of claimant's temporary low back injury of October 5, 1992 until his subsequent intervening accident which occurred on or about April 4, 1993, when bending over to lift and/or hug a child.

Having reviewed the entire record, the Appeals Board finds the findings and conclusions enumerated in the Award of the Administrative Law Judge to be accurate and appropriate, and it adopts same as its own findings as if specifically set forth herein.

It is well established under Kansas Workers Compensation Law that when a primary injury under the Workers Compensation Act arises out of and in the course of employment, every natural consequence that flows from the injury is compensable if it is a direct result of the primary injury. Reese v. Gas Engineering & Construction Co., 219 Kan. 536, 548 P.2d 746 (1976).

The Appeals Board finds the facts of the case at bar to be somewhat analogous to the situation in Stockman v. Goodyear Tire & Rubber Co., 211 Kan. 260, 505 P. 2d 697 (1973). We find that the claimant's increased disability resulted from a new and separate accident and, therefore, is not compensable as a natural consequence of the October 5, 1992 injury. See also Gillig v. Cities Service Gas Co., 222 Kan. 369, 564 P.2d 548 (1977); and Jackson v. Stevens Well Service, 208 Kan. 637, 493 P. 2d 264 (1972).

#### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge John D. Clark dated November 3, 1995 should be, and

is hereby, modified to grant claimant temporary medical benefits for the period beginning October 5, 1992 and ending April 4, 1993 and unauthorized medical expenses up to \$350.00 to be paid upon presentation of receipts to the respondent/insurance carrier and the Workers Compensation Fund. Pursuant to their Stipulation, all benefits and costs shall be paid 60% by respondent and its insurance carrier and 40% by the Workers Compensation Fund. The orders contained in the Award are otherwise adopted by the Appeals Board as its own.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 1996.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Brian D. Pistotnik, Wichita, Kansas  
Frederick L. Haag, Wichita, Kansas  
Joel P. Hesse, Wichita, Kansas  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director